

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

REC'D 26 JAN 2005

WIPO PCT

To:

see form PCT/ISA/220

26/4

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

		Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)
Applicant's or agent's file reference see form PCT/ISA/220		<b>FOR FURTHER ACTION</b> See paragraph 2 below
International application No. PCT/EP2004/012090	International filing date (day/month/year) 21.10.2004	Priority date (day/month/year) 24.10.2003
International Patent Classification (IPC) or both national classification and IPC C08B30/12, C08B37/00, A23L1/09, A23L1/0522		
Applicant BAYER CROPSCIENCE GMBH		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/012090

**Box No. I Basis of the opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - a sequence listing
    - table(s) related to the sequence listing
  - b. format of material:
    - in written format
    - in computer readable form
  - c. time of filing/furnishing:
    - contained in the international application as filed.
    - filed together with the international application in computer readable form.
    - furnished subsequently to this Authority for the purposes of search.
3.  In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/012090

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or  
industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	
	No: Claims	1-10
Inventive step (IS)	Yes: Claims	
	No: Claims	1-10
Industrial applicability (IA)	Yes: Claims	1-10
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/012090

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: US 2003/094172 A1 (BENG'S HOLGER ET AL) 22 May 2003 (2003-05-22)
- D2: US 2003/004332 A1 (BAUERLEIN MICHAEL ET AL) 2 January 2003 (2003-01-02)
- D3: DE 198 60 375 A (AVENTIS RES & TECH GMBH & CO) 6 July 2000 (2000-07-06)

**Novelty - Article 33(1) and (2) PCT**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-10 is not new in the sense of Article 33(2) PCT.

According to the description of the present application, page 5, lines 20, the invention relates to the fact that water-insoluble linear poly-alpha-1,4 glucans as described in D1-D3, are already resistant starches before being retrograded. However, a feature relating to the omission of the retrogradation step is not disclosed in any way in independent claim 1 on file. Therefore, D1-D3 anticipate the subject-matter of claims 1-9.

The subject-matter of claim 10 is already disclosed in tables 1-3 of D1. From said tables, it can be seen that resistant starch content of the starting material is already 58-65%.

Even with the restriction that the RS content should be at least 70%, the following remarks are made:

As the starting material described in D1 (tables) is identical to the water-insoluble linear poly-alpha-1,4 glucans of the present application (same preparation method), it is unclear why the resistant starch content of the glucans of the present application is higher. The only explanation would be that essential information about the preparation method of the linear poly-alpha-1,4 glucans of the present application is missing from the claims.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/012090

**Inventive step - Article 33(1) and (3) PCT**

The question whether the application involves an inventive step is only of relevance once novelty of an independent claim has been established.